

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0543

MANDATORY PENALTY  
IN THE MATTER OF

KINDER MORGAN ENERGY PARTNERS, L.P.  
THROUGH ITS OPERATING PARTNER SFPP, L.P.  
FOX ROAD PETROLEUM RELEASE SITE  
SOLANO COUNTY

This Complaint is issued to Kinder Morgan Energy Partners, L.P. through its operating partner SFPP, L.P. (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2008-0008 (NPDES No. CA0084760) and Time Schedule Order R5-2008-0009.

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board) finds the following:

1. The Discharger owns and operates a Groundwater Cleanup System (GWCS) at the location of a petroleum release on Fox Road near Elmira, Solano County. Treated groundwater is discharged to Gibson Canyon Creek, a water of the United States.
2. On 25 January 2008, the Central Valley Water Board issued WDRs Order R5-2008-0008 (NPDES No. CA0084760) and Time Schedule Order (TSO) R5-2008-0009, to regulate discharges of treated groundwater from the GWCS, and rescinded Order No. 5-01-078.
3. On 18 November 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2008-0591 for mandatory minimum penalties for effluent violations from 1 January 2000 through 31 December 2007. The Discharger paid the Complaint and the Central Valley Water Board considers the matter resolved.
4. On 16 March 2009, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations for effluent limitation violations for the period from 1 January 2008 through 31 December 2008. On 25 March 2009, the Discharger sent a letter stating it had no comments.
5. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

CWC section 13385 (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more, or for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

6. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

7. TSO R5-2008-0009 Order 2 states, in part, the following:

The following interim effluent limitations shall be effective immediately. The interim effluent limitations for manganese...shall be effective until **31 December 2012**, or when the Discharger is able to come into compliance, whichever is sooner:

Parameter	Units	Maximum Daily Effluent Limitation
Manganese, Total Recoverable	µg/L	995

8. According to the Discharger's self-monitoring reports, the Discharger committed three (3) serious Group I violations of the above effluent limitation contained in Order R5-2008-0009 during the period beginning 1 January 2008 and ending 31 December 2008. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **nine thousand dollars (\$9,000)**.
9. The total amount of the mandatory penalties assessed for the cited effluent violations is **nine thousand dollars (\$9,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
10. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

**KINDER MORGAN ENERGY PARTNERS, L.P. IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **nine thousand dollars (\$9,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **13/14 August 2009**, unless the Discharger does either of the following **by 26 June 2009**:
  - a. Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **nine thousand dollars (\$9,000)**; or
  - b. Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

original signed by  
\_\_\_\_\_  
PAMELA C.CREEDON, Executive Officer  
  
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27 May 2009